

To: Harrison, Melissa[Harrison.Melissa@epa.gov]
Cc: Purchia, Liz[Purchia.Liz@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Gray, David
Sent: Sun 11/8/2015 6:20:33 PM
Subject: Re: ABQ Journal front page

Region 9

Sent from my iPhone

On Nov 8, 2015, at 11:19 AM, Harrison, Melissa <Harrison.Melissa@epa.gov> wrote:

No idea. Is the person quoted in HQ?

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

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Harrison.Melissa@epa.gov

On Nov 8, 2015, at 10:47 AM, Gray, David <gray.david@epa.gov> wrote:

I didn't . The reporter is in DC.

Sent from my iPhone

On Nov 8, 2015, at 9:21 AM, Purchia, Liz <Purchia.Liz@epa.gov> wrote:

Did we know this was coming?

Liz Purchia
U.S. EPA
202-564-6691
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On Nov 8, 2015, at 10:18 AM, Gray, David <gray.david@epa.gov> wrote:

Navajo leaders bitter about EPA's handling of mine spill

[cid:595240F2-BAEA-40EE-8704-

A272883D3FBE@gateway.pace.com]<http://www.abqjournal.com/?attachment_id=672621>

By Michael Coleman / Journal Washington

Bureau<<http://www.abqjournal.com/author/mcoleman>>

Sunday, November 8th, 2015 at 12:05am

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WASHINGTON – Navajo Nation President Russell Begaye was not happy.

The leader of the nation's largest Indian tribe sat before a packed U.S. Senate hearing listening to Environmental Protection Agency Administrator Gina McCarthy testify about the Gold King Mine spill that sent 3 million gallons of mustard-colored sludge pouring into the San Juan and Animas rivers, polluting waters in three states and the Navajo Nation.

McCarthy admitted during the mid-September hearing that the spill was caused by EPA workers who accidentally punctured a wall of the abandoned mine as they worked to seal its leaks, and she vowed the agency would compensate those financially harmed by the incident.

[Kayakers float on the Animas River near Durango on Aug. 6. The water was discolored by the Gold King Mine spill, in which about 3 million gallons of waste were released. (Jerry McBride/The Durango

Herald/AP]<http://www.abqjournal.com/?attachment_id=672627>

Kayakers float on the Animas River near Durango on Aug. 6. The water was discolored by the Gold King Mine spill, in which about 3 million gallons of waste were released. (Jerry McBride/The Durango Herald/AP

But she also defended the EPA's bungled initial response and conceded she hadn't fired or reprimanded anyone in the aftermath.

Begaye, listening quietly in a dark business suit and a bright turquoise necklace, could hardly believe what he was hearing. And when it was his turn to speak to Congress, he didn't mince words.

"The Navajo Nation does not trust the EPA, and we expect them to be held fully accountable for what they have done to my people and all people who live along the San Juan and Animas rivers," Begaye said.

That dramatic day of Senate testimony served notice that the fallout from the spill could go well beyond water and soil contaminated by heavy metals unleashed

from the Gold King Mine. The spill also had a major impact on communities and farms in southern Colorado and northwest New Mexico, but the Navajo Nation has been exceptionally outspoken in its criticism of the EPA.

Almost two months after his congressional testimony, Begaye told the Journal in an interview that the EPA has been slow to mitigate the damage and compensate tribal victims, which he said threatens to undermine decades of hard-won progress in the Navajo Nation's relationship with the federal government.

"We're not seeing any action," Begaye told the Journal. "If we were seeing the cleaning of the canals, if we were seeing some of the deposits of minerals along the river being removed or compensation to farmers right now because they have expended dollars they don't have, then, yeah, we'd believe them. But they haven't done anything yet. Nothing has been done." [A00_jd_08nov_San-Juan-River_spill]<http://www.abqjournal.com/?attachment_id=672625>

EPA officials told the Journal that the agency is working in good faith to fix the damage from the spill, compensate those who suffered financial harm and ensure future water quality.

"Two or three weeks into the spill, we had 35 EPA personnel and contractors and others helping in the response on the Navajo Nation," said Enrique Manzanilla, director of the EPA's superfund division and one of the agency's leaders in charge of working with the Navajo. "We supplied hay, we supplied water – we had a fairly massive presence in the Navajo Nation in the San Juan River corridor all the way to Lake Powell, and in the the aftermath we've stayed engaged."

Manzanilla acknowledged that the disaster has damaged the Navajo Nation's trust in the EPA but said the relationship will recover.

"We can work through it, and we are working through it – we have to," Manzanilla said. "We are partners in the work that is done with regard to public health and environmental protection in the Navajo Nation. That partnership has to sustain itself despite incidents like the Gold King Mine. There is no choice. We are certainly dedicated to making sure the partnership works."

Lost crops

In the days and weeks after the Gold King Mine spill, some Navajo Nation farmers closed irrigation canals from the polluted San Juan River to prevent the water from reaching their land and crops. As a result, farmers are reporting much smaller yields than normal this fall. Begaye said the total Navajo harvest was diminished by as much as two-thirds compared to 2014. Navajo officials told the Journal that roughly 1,000 farmers on the reservation suffered losses and will likely file claims.

The Navajo Nation is pursuing a two-track settlement process.

It expects the federal government to compensate the Navajo government for costs it incurred during the spill – for personnel overtime costs, for example, or for the purchase of emergency equipment such as new water tanks. The Navajo government hasn't put a price tag on its costs yet but Begaye said it will be in the millions.

Additionally, individual Navajos, as well as non-Indians, affected by the spill will be eligible to file claims for financial harm with the EPA.

“The average (Navajo) family income is about \$12,000 a year, so when something totally unexpected like this happens, and the canal is shut off and you can't get water to your crops and your livestock is penned up because you don't want them in the river, it's devastating,” Begaye said.

New Mexico's Democratic Sens. Tom Udall and Martin Heinrich, along with Rep. Ben Ray Luján, D-N.M., have teamed up with Sen. Michael Bennet, a Colorado Democrat, to introduce claims legislation for farmers and other individuals who suffered financial hardship because of the mine spill. Their Gold King Mine bill – modeled on legislation that compensated victims of the government-caused Cerro Grande fire of 2000 – would set up an Office of Gold King Mine Spill Claims within the EPA to carry out the compensation process under the Federal Tort Claims Act. Those who incurred property, business and/or financial losses would all be considered for payouts.

“By establishing an office within EPA to process and pay claims, it will help make the people of New Mexico and the Navajo Nation whole,” said Luján, who introduced the bill in the House.

Udall, in a Journal interview, said there are “major concerns” on the reservation about individuals and businesses being fairly compensated.

“I know the Navajo Nation and President Begaye are very frustrated with EPA, they're frustrated with the way the government-to-government relationships were handled, and they also, I think, are entitled to compensation,” Udall said. “I will push for the EPA to deal forthrightly.”

Udall said that, while his bill is modeled on legislation that helped resolve claims related to the Cerro Grande fire, which burned 450 homes in Los Alamos 15 years ago, the Gold King mine disaster is more challenging from a compensation standpoint.

“The Cerro Grande dealt with people losing their homes,” Udall said. “The thing about a home in a place like Los Alamos is you know the value of the land, you know the value of the home, and there is an estimate. This has more nuances to it.

When you are farming and putting water on the land, it's a question of how much is your crop worth and how much of your crop did you lose?"

Claims not submitted

In the days after the spill, Begaye urged Navajo Nation farmers and others not to sign the Standard Form 95 compensation document that EPA officials were distributing to residents on the reservation. He and other tribal officials contended that it was an effort by the EPA to strong-arm settlement agreements before residents of the Navajo Nation understood the extent of their damages. The EPA disputes this notion, reasoning that they were simply operating under the claims process long established by federal policy under the Federal Tort Claims Act. A spokeswoman in the EPA's Washington office told the Journal that, as of Friday, the agency had received 36 claims related to the spill, none of which appeared to be from members of the Navajo Nation.

Begaye said that the Navajo Nation wants its people to be allowed to bypass the normal EPA claims process to file not only this year but potentially again when they assess losses in the future.

"This (time reflects) just the initial damages, but then what about next spring when farmers are assessing their crops, especially annual crops like hay?" Begaye said. "They will have to see how much damage they incurred. They may have to plow it under, reseed it and start over again. We really will not know (the full extent of the damages) until probably 2017."

Manzanilla said the EPA is considering the Navajo Nation's request to keep the claims process open for an extended time.

"That is an option," he said. "We're working through it. We've gotten a lot of comments to that effect from Navajo Nation and other jurisdictions."

Udall also said the request seems reasonable, to an extent, and that nothing in his compensation bill would restrict amended claims.

"That is a very fair thing to request," Udall said. "We support that and I believe our bill does that. We don't have anything that limits an individual's ability to get all of their compensation. We're not saying that individuals can't apply initially with what they believe they've lost, and then a month or two later if they feel they didn't accurately portray it or if they find other costs they would be able to submit those."

But Udall said it is also unreasonable to expect that the EPA would leave the claims process open indefinitely.

"At some point, the government is going to want to close it out," Udall said. "You

don't keep something like that open forever.”

[Melvin Jones, left, and Richard Charley deliver water to a ranch in Shiprock that is on the San Juan River on Aug. 12. The ranch is in the Navajo Nation. (Matt York/The Associated

Press)]<http://www.abqjournal.com/?attachment_id=672631>

Melvin Jones, left, and Richard Charley deliver water to a ranch in Shiprock that is on the San Juan River on Aug. 12. The ranch is in the Navajo Nation. (Matt York/The Associated Press)

New Mexico Environment Secretary Ryan Flynn was highly critical of the EPA's response to the disaster and said he was dismayed that the investigation into what, exactly, triggered the spill was handled by the U.S. Department of the Interior, not by an independent outside expert. The Interior Department report issued late last month placed the blame squarely on the EPA but Flynn said it “shied away” from specific details about how the spill happened.

“There is certainly some good information in the report but it didn't take the final step ... which was to really identify how certain critical decisions were made, and what those decisions were based on, and who, in fact, made those decisions,” Flynn said, adding that he was less interested in “finger pointing” than determining exactly what went wrong.

“The exercise we need to engage in here is how do we learn from this what could have been done better to prevent this from occurring,” he said.

Lost sense of safety

As summer turned to fall, Begaye was regularly shuttling between Window Rock and Washington, D.C., to meet with EPA, Justice Department and other federal officials in pursuit of compensation and agreements to clean up the toxins embedded in the silt along the San Juan and Animas rivers.

The first-term president and lifelong resident of the reservation told the Journal that the economic damages can be tallied, but the Navajo lost something else in the spill. He said some children are now afraid to play in the water, while adults have fretted that it could cause cancer or miscarriages.

A week after the spill, the EPA declared that the waters had returned to their “pre-event” conditions. But Begaye isn't convinced.

Negotiations over future water quality monitoring are ongoing. The EPA has proposed doing the monitoring itself, but the Navajo Nation – as well as the New Mexico Environment Department – would like to see the EPA pay for independent monitoring, perhaps by a university. Manzanilla said the EPA is working to find a satisfactory resolution. Ensuring the future health of the river is

critically important to the Navajo, Begaye said.

He said many Navajo now have a wariness of that water.

“People walk alongside it, but you see them look inside not trusting it – almost like it is diseased,” Begaye said. “There was safety before. It’s what they depended on as a source of revenue and income stability. All of that has been jerked away.”

Sent from my iPhone